IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.659 OF 1993

Pandharinath Shelke
residing at building
No.22, Room No.1573,
Ground Floor, Abhudaya
Niwas, Kala Chowki,
Bombay 400 033. ...Appellant.

V/s

The State of Maharashtra ...Respondents.

Shri Nitin Pradhan advoate for the appellant.
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 15th February 2005

ORAL JUDGMENT:

1. Appellant is challenging the judgment and order passed by the Special Judge for Greater Bombay in Special Case No. 24 of 1989. By the said judgement and order dated 15th October, 1993, the Trial Court was pleased to convict the appellant under section 7 of the Prevention of Corruption Act, 1988 and he was sentenced to suffer R.I. for six months and to pay fine of Rs 1,000/- and, in default, to undergo R.I. for one month. He was also convicted under section 13(2) of the Prevention of Corruption Act and sentenced to suffer R.I. for six months and to pay fine of Rs 1000/-. The accused No.2 was acquitted of the offence with which he was charged.

2. Prosecution's case is that, at the relevant time, appellant - accused No.1 who was at that time a Rationing Officer was in charge of the Rationing Office, Kurla and it is alleged that he demanded bribe of Rs 400/- as monthly instalment on 28/9/1988 from the complainant who owned the Rationing Shop. Prosecution's case is that the accused No.2 who was working as Assistant Rationing Officer made repeated demands for the payment of the said amount to accused No.1 and, therefore, it was alleged that he had abetted the said offence. Prosecution case is that the accused were caught red-handed. The statements of witnesses were recorded and charge was framed against the accused and, thereafter, the impugned order was passed by the Trial Court. Appellant has filed this appeal challenging the said judgment and order of the Trial Court.

3. It is submitted by the learned Counsel appearing on behalf of the appellant that the prosecution has not proved that the appellant had demanded bribe of Rs 400/- as monthly instalment on 28/9/1988. It is further submitted that there is no evidence adduced by the prosecution that the appellant demanded and accepted the said amount of Rs 400/- on 6/10/1988. It

is submitted that there is no evidence except that of the complainant - P.W.1 regarding the alleged demand which was made on 28/9/1988 and it is further submitted that the evidence of P.W. 1 itself is full of contradictions. It is further submitted that there is delay in filing the complaint. It is submitted by the learned counsel appearing on behalf of the appellant that since version of demand itself has not been established by the prosecution, the entire foundation of the prosecution falls to the ground and the subsequent version of acceptance of money towards illegal gratification also becomes doubtful. The learned Counsel appearing on behalf of the appellant has relied upon number of judgments of the Supreme Court and this Court on this point.

4. It is further submitted that the panch witnesses who are examined by the prosecution have given two different versions regarding acceptance of the amount by the accused and, therefore, there is no independent corroboration to the evidence of P.W.1 regarding acceptance of the amount by the accused. It is submitted that though other independent witnesses were available which is evident from the statement of P.W.1, these independent witnesses have not been examined. It is submitted that the version given by

P.W.1 in the complaint and in his evidence which was given in the Court is totally different and this change in the stand has been made in order to fill-up the lacuna in the First Information Report. It is further submitted that P.W.1 had deliberately changed his version regarding initial demand made by the accused from 29/9/1988 to 28/9/1988. It is submitted that the independent witness examined by the prosecution viz. P.W.3 - Baluji Katke has not supported the prosecution case. It is submitted that it was the duty of the prosecution to examine the other witness Kishan Ghuge. However, the prosecution has not examined this independent witness and, therefore, adverse inference should be drawn against the prosecution. The learned Counsel appearing for the appellant has taken me through the evidence of the witnesses and has submitted that the prosecution has not proved that the amount which was allegedly given to the appellant was towards illegal gratification.

5. The learned APP appearing on behalf of the State has vehemently opposed the submissions made by the learned counsel appearing on behalf of the appellant. He submitted that the prosecution has proved its case beyond the reasonable doubt and has further submitted that the appellant was caught red-handed and the

demand and acceptance have been proved beyond the reasonable doubt. He submitted that, therefore, no case is made out for interfering with the Judgement and Order passed by the Trial Court.

6. Prosecution, in support of its case, has examined complainant - P.W.1. He has stated in his evidence that he is a proprietor of Rationing Shop. He has stated that, initially, it was a partnership firm. However, 10 years before the date of incident, the shop was transferred in his name. He has stated that he used to go to the office of "E" region whenever he had work. He has stated that he used to go to that office for lodging a complaint whenever there was a shortage of kerosene quota. He has stated that he used to meet the appellant who was working as a Rationing Officer. The complainant, thereafter, has given topography of the said Office. The complainant, thereafter, has stated that he was the member of the New Grain Association.

7. P.W.1 has given details regarding the incident which took place on 6/10/1988. He has stated that Inspector Barse met him on 28/9/1988 and told him to meet the accused and, therefore, on the next day, he went to the office of the accused and, at that time,

accused demanded Rs 400/-. He has stated that money was demanded because a complaint was received against the complainant. P.W. 1 has stated that he questioned the accused No.1.why he should pay Rs 400/-. He told him to meet accused No.2. He, therefore, went to the next room and met accused No.2 and accused No.2 told him that he would have to pay the money to accused No.1. At this stage, P.W.1 stated that he had received less quota of kerosene oil and accused No.2 promised him that his quota would be increased by 1000 litre and for that purpose accused No.2 demanded Rs 200 for increasing quota of kerosene oil. He was, therefore, asked to pay the amount on 6/10/1988. According to P.W.1, he went to the office of Anti-corruption Bureau. A complaint was lodged, Pre-trap panchanama was made. The complainant along with panch Deo went to the Office of the accused. He met accused No.2 and inquired him about accused No.1. He inquired with accused No.2 whether his work of increasing kerosene quota was over and accused No.2 replied in the affirmative. Thereafter, he paid Rs 200/- to accused No.2 and went inside the cabin of accused No.1 and gave money which was accepted.. P.W.1 has stated that accused No.1 asked him whether he had done his work and that P.W. 1 replied in the affirmative and gave an amount of Rs 400/-. He,

thereafter, gave signal and the raiding party arrested the accused. P.W. 1 has stated that no sooner accused No.1 was caught by Havildar, he removed money from his pocket and threw it out of the window.

8. P.W. 1 has been cross-examined at length and in his cross-examination he has admitted that there was no restriction on the quota of kerosene. He has further admitted that the quota of 22000 litres of kerosene for the month of September was the correct quota and, therefore, there was no question of increasing this quota for the month of September, 1988. P.W.1 in his cross-examination has given different version on the quota which he actually received in the month of September, 1988 and at one stage this witness has admitted that, initial answer which he had given regarding kerosene quota for the month of September was incorrect. He has admitted that he did not receive 1000 litres of kerosene less than his quota.

9. From the evidence of P.W.1, it can be seen that it is alleged by him that accused No.1 had demanded Rs 400/- as monthly instalment because certain complaints were received against him. On the same day, accused No.2 had made demand of Rs 200/- for increasing the

kerosene quota. P.W.1 had, therefore, given different versions regarding the alleged demand which was made by the accused on 28/9/1988. Even the words which were used while making the demand have been changed by P.W.1. The version given by the complainant in his FIR and the one given by him in his evidence therefore on the question of demand and reason why demand was made and the words which were used when the demand was made are entirely different. From the cross-examination of P.W.1, it can be seen that several contradictions which are made by P.W.1 in his evidence have been brought on record regarding demand and acceptance of money by both the accused. P.W.1 has, in his cross-examination, admitted that his earlier statement regarding less kerosene being received by him in September was incorrect and that he had given wrong answer. Thus the demand allegedly made by accused No.2 for increase of quota falls to the ground. The accused No.2, therefore, has been rightly acquitted by the trial court. The trial court, in my view, ought to have taken into consideration that if the version given by P.W.1 regarding demand made by accused No.1 - Shelke also becomes very doubtful and the entire testimony of P.W.1, therefore, becomes untrustworthy and, therefore, cannot be relied upon regarding question of demand.

10. The Supreme Court in the case of Suraj Mal vs. The State (Delhi Administration) reported **AIR 1979 CRI.L.J. 1087** has observed in para 2 of the said judgement that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, testimony of such witnesses becomes unreliable and unworthy of credence. The Supreme Court in the case of Sita Ram vs. The State of Rajasthan reported in **1975 CRI.L.J. 1224** has observed that if demand of bribe by the accused is not proved then, in that case, story of payment of money by the complainant also is not established beyond the reasonable doubt and the presumption raised under the Act cannot be drawn for convicting the accused. The Supreme Court in the case of Panalal Damodar Rathi vs. State of Maharashtra, reported in **1979 CRI.L.J. 936** has held that position of the complainant is not better than that of accomplice and, therefore, unless there is a corroboration to his testimony by other independent witnesses, the evidence of complainant alone cannot be relied upon on the question of demand made by the accused.

11. It is, therefore, essential to see whether there is corroboration to the evidence of the complainant

regarding demand of bribe by the other witnesses. The prosecution has examined P.W.2 - Shrikant Deo who has acted as panch. From his evidence, it can be seen that the version given by him regarding acceptance of amount and the demand made by the accused is slightly different than the one given by P.W.1. Even the wording used by P.W.2 in respect of demand made by the accused is also different. Prosecution has then examined P.W. 3 - Baluji Katke. This witness has been examined as an independent witness. He, however, does not support the prosecution case and he was, therefore, declared hostile by the prosecution. Prosecution has then examined P.W. 4 - Vasant Barse who was working as Rationing Inspector at the relevant time. This witness also does not support the prosecution case and he was also declared hostile by the prosecution. Thus P.W. 4 does not support the story of P.W.1 that he had met him in his shop and he had asked him to meet P.W.1 - Shelke. Thus, the link which is sought to be established between accused No.1, accused No.2 and P.W.4 is broken. P.W.1 in his complaint has stated that P.W.4 had visited his shop and had asked him to meet accused No.1. He has further stated that when he met accused No.1 in his office, he told him that he should pay Rs 400/- and when he inquired why such amount was to be paid, he

was asked to meet accused No.2. Accused No.2, according to the complainant, had demanded money of Rs 400/- which was to be paid to accused No.1 and Rs 200/- to be paid to himself i.e. accused No.2 for increasing quota of kerosene. As stated hereinabove, in the cross-examination P.W. 1 has admitted that he was receiving proper quota of kerosene. Thus, the entire story which is directed by P.W.1 regarding initial demand, therefore, is not proved beyond the reasonable doubt. Thus, the ratio of the judgement in the case of Suraj Mal (supra) would be squarely applicable to the facts of the present case and it will not be possible to rely on the evidence of P.W.1 - complainant. Further, it can be seen that this evidence is not corroborated through the independent witnesses. The evidence of P.W.5 and P.W. 6 do not assist the prosecution case as P.W. 5 has given details regarding quantity of kerosene delivered to the complainant as well as the other shopkeepers. P.W. 6 was working as a controller of rationing at the relevant period and he has granted sanction to prosecute the accused. P.W. 7 is an Investigating Officer.

12. The Supreme Court in the case of G.V. G.V. Nanjundiah Vs. State (Delhi Administration) reported

in **1988 SCC (Cri) 77** has held that once the allegation regarding demand of bribe is proved to be false, the allegation regarding payment of bribe and recovery of the same from the accused should be viewed with suspicion. In the present case, the prosecution has completely failed in establishing the theory of payment made to the accused by the complainant. The Supreme Court in the case of G.V. Nanjundiah (supra) in para 26 has observed as under:-

> "26. Therefore, the very foundation of the prosecution case is shaken to a great extent. The question as to the handing over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. When it is found that no such demand was made by the accused and the prosecution has given a false story in that regard the court will view the allegation of payment of the bribe to and recovery of he same from the accused with suspicion."

Similarly, the Madhya Pradesh High Court in the case of Ram Swaroop Rathore Vs. State of M.P. reported in

2000 CRI.L.J. 1882 has observed that recovery of money de hors the demand would be sufficient to convict the accused. Similarly, the Madhya Pradesh High Court in the case of Suresh Kumar Shrivastava Vs. State of M.P. reported in **1994 CRI.L.J. 3738** has also held that mere recovery of money from the accused was not sufficient to raise any presumption against him and that it renders the prosecution story doubtful. Thus, in my view, the trial court has clearly erred in appreciating the evidence on record and coming to the conclusion that the prosecution has proved the case of demand and acceptance by accused No.1. The judgment and order of the trial court, therefore, will have to be set aside.

13. Accordingly, the following order is passed:-

O R D E R

. Appeal is allowed. The judgment of the trial court is quashed and set aside. The accused is acquitted of the offence with which he was charged. Bail bond of the accused stands cancelled.

V.M. KANADE, J.